

Message Text

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ACTION ARA-10

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TO SECSTATE WASHDC 5935

C O N F I D E N T I A L LIMA 5719

E.O. 11652: GDS

TAGS: EINV, EMIN, PFOR, PE

SUBJECT: STATUS OF CERRO ZINC SALES CONTRACTS

REFS: A) LIMA 3357, B) LIMA 2595

1. HAROLD GARDENER AND NICHOLAS DE PIEROLA Y BALTA, THE PERUVIAN LAWYER REPRESENTING CERRO INTERESTS, CALLED ON EMBASSY JULY 15 TO BRING US UP TO DATE ON STATUS OF ZINC SALES CONTRACTS (REF A) AS WELL AS TO DISCUSS ANOTHER ISSUE, BEING REPORTED SEPTEL. DE PIEROLA SAID THAT NEITHER THE SPANISH LANGUAGE AGREEMENT REGARDING SALES NOR THE "MODIFICATION AGREEMENT" HAVE YET BEEN SIGNED. HE EXPLAINED THAT MINPECO HAS NOW SENT THE SALES AGREEMENT TO THE CENTRAL BANK FOR ITS APPROVAL AND THAT THE CENTRAL BANK'S BOARD OF DIRECTORS WILL VERY SHORTLY BE MAKING A DECISION.

2. DE PIEROLA EXPLAINED THAT A DISAGREEMENT HAS ARISEN CONCERNING SALES OF ZINC PRODUCED FROM PERUVIAN CONCENTRATES WHICH WOULD BE TOLLED THROUGH A FINNISH REFINERY. CERRO WISHES TO CHARGE MORE THAN A 2 PERCENT SALES COMMISSION ON THESE SALES, THE MAXIMUM LIMIT PERMITTED BY PERUVIAN LAW. ACCORDING TO CERRO, HOWEVER, PERUVIAN LAW SHOULD
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NOT APPLY, SINCE THE SALES OF THE FINAL PRODUCT TAKES

PLACE OUTSIDE PERU AND HENCE IS A TRANSACTION TO WHICH THE LIMITATIONS IMPOSED BY PERUVIAN LAW WOULD NOT APPLY, BUT RATHER A STANDARD INTERNATIONAL SALES COMMISSION. SALES TO JAPANESE BUYERS UNDER THE TERMS OF THE SALES CONTRACT ARE NOW GOING FORWARD UNDER THE TERMS OF THE SALES SALES AGREEMENT, EVEN THOUGH THE FINAL AGREEMENT HAS NOT YET BEEN SIGNED. THESE POSE NO IMMEDIATE PROBLEM.

3. DE PIEROLA SAID THAT ONCE THE CENTRAL BANK GIVES ITS OPINION, THEN MINPECO AND CERRO SALES WILL HAVE TO APPROVE THE DRAFT DOCUMENTS. FOLLOWING THIS PROCEDURE, THE AGREEMENTS WOULD THEN BE FORMALLY SIGNED.

4. COMMENT: NOT UNEXPECTEDLY, THE GOP IS MOVING VERY SLOWLY TO APPROVE THE FINAL AGREEMENTS, PROBABLY BECAUSE OF INEFFICIENCY, BUT ALSO BECAUSE NO PERUVIAN AGENCY WANTS TO MAKE A DECISION FOR WHICH IT MIGHT ULTIMATELY BE HELD RESPONSIBLE. WE PLAN TO DISCUSS THIS MATTER WITH OFFICIALS OF THE CENTRAL BANK TO SEE IF THE PROCESS CAN BE MOVED FORWARD. DE PIEROLA WAS NOT UNDULY CONCERNED THAT THE GOP MIGHT RENEGE ON THE BASIC AGREEMENTS, ALTHOUGH WE CANNOT COMPLETELY DISCOUNT THIS EVENTUALITY.
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